Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
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DOCKET FILE COPY ORIGINAL

COMMENTS OF COMCAST CORPORATION

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CERTIFICATE OF SERVICE

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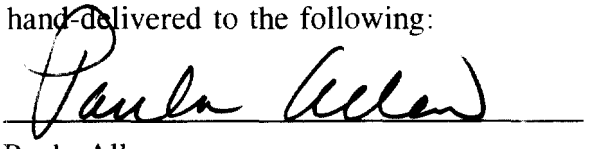

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COMMENTS OF COMCAST CORPORATION

I. INTRODUCTION AND SUMMARY

Comcast Corporation ("Comcast") is one of the four largest multiple cable system operators in the United States, serving 4.3 million customers in 19 states across the country. In addition to its cable television business, through its ownership of cellular systems serving over 600,000 customers in the mid-Atlantic state, as well as its ownership interests in Sprint Spectrum, L.P., and Nextel Communications, Inc., Comcast is a participant in wireless telecommunications.

Comcast is also in the vanguard of cable operators that are moving into providing competitive telephony services. In several cities in the United Kingdom, Comcast provides integrated residential and business telephony services and cable television service. Comcast also holds ownership interests in the competitive local exchange carriers ("CLECs") Teleport Communications Group Inc. and Eastern TeleLogic Corporation, who pioneered competition against the local monopolists in the late 1980s as competitive access providers ("CAPs"). Through these affiliates, the company is enabling telephone customers in many parts of the

country to have a competitive facilities-based alternative to their incumbent local exchange carriers (the "incumbent LECs"). Finally, by upgrading its cable plant so that it is capable of delivering residential telephone service, Comcast is moving toward becoming an active provider of voice and data services and a competitor to the incumbent LECs in all customer segments. Accordingly, Comcast is keenly interested in the successful resolution of the interconnection, unbundling and other crucial intercarrier competition issues being addressed in this proceeding.[1/]

The Commission should be guided by certain key principles as it endeavors to fulfill its statutory obligation to establish rules that will foster the entry of new competitors into the market. First, the Commission must establish a set of uniform ground rules to guide and govern the provision of competitive telecommunications services both at the interstate and at the intrastate levels.[2/] To achieve this, the Commission must articulate clear and precise national standards for interconnection, unbundling, resale, collocation, pricing and compensation.[3/] Although the 1996 Act charges the states with ensuring the proper observance of rules established in these critical areas, it is essential that the Commission set uniform baseline standards to facilitate the states' review when they are called upon to resolve conflicts between carriers. Absent such baseline standards, the move toward local

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[1/]Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 96-182 (adopted April 19, 1996)("NPRM").

[2/]47 U.S.C. § 251(c)(2)(D) and (c)(3).

[3/]47 U.S.C. § 251(a)-(c).

exchange competition will continue to be haphazard, irregular, and arbitrary, with the result that the national interest in investment and deployment of competitive telecommunications networks will be defeated. In short, the Commission must leave no doubt that "regulatory parity" does not level the playing field, is not an appropriate regulatory structure for the transition from a monopoly market to a competitive market, and is contrary to the provisions of the 1996 Act.

Second, if negotiated interconnection agreements between carriers are to yield real competition, the Commission must tailor its interconnection rules to create greater parity in the bargaining power of incumbent LECs and CLECs. As noted in the NPRM, the Commission's goal in this proceeding is to "remove both the statutory and regulatory barriers and economic impediments that inefficiently retard entry . . . ."[4/] The Commission's rules must reflect the fact that incumbent LECs and CLECs are not equally situated in terms of market power or bargaining power.[5/] By explicitly acknowledging and neutralizing the economic advantages that incumbent LECs enjoy over CLECs, the Commission can ameliorate a key impediment to CLEC entry.

Third, the Commission must ensure that its rules will promote the development of facilities-based alternative networks, the genuine competition that Congress intended. Cable

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[4/]NPRM at ¶ 12 (emphasis added). Indeed, the net result of not establishing a uniform set of national standards will be the creation of more regulation and regulatory barriers, rather than fewer. If the Commission does not adopt national standards, and leaves that job to the states, the result will be a compounding of the already overwhelming number of state and local rules and regulations imposed on telecommunications carriers, and an explosion of disputes the review of which could swamp the Commission.

[5/]NPRM at ¶ 31.

system operators, as the primary providers of hardwired broadband facilities in the country, are leaders in the development of new and enhanced broadband services. The Commission's rules must promote investment in network infrastructure and encourage cable system operators to further invest in their broadband facilities.

Fourth, although the 1996 Act includes provisions for the resale of local exchange services, these provisions should be seen as a means to an end: permitting competing carriers to build an economic base sufficient to justify the deployment of competitive facilities. Resale of local exchange services provides consumers only a pricing alternative, whereas facilities-based competitors provide consumers with true alternatives to the networks and services of the incumbent LECs. Resale of services may be useful in filling in gaps where facilities-based competition is uneconomic or impractical However, if the Commission goes too far in promoting resale, it can create disincentives to investment in competitive facilities.

Fifth, the Commission must be mindful at all times that the specific issues addressed in this proceeding, particularly reciprocal compensation pricing, are only one subset of the issues necessary to be resolved satisfactorily if competition in the telecommunications marketplace is to flourish. The total economic effect of the rules that the Commission adopts on the key issues of access charges and universal service is as crucial to satisfying the Act's paramount goal of promoting facilities-based competition as are the technical and procedural standards that are adopted for interconnection and unbundling. At present, there are numerous approaches to access charge pricing and universal service subsidy contributions

being explored at the state level.[6/] However, a uniform national policy is necessary to harmonize interconnection pricing, access charges and universal service contribution requirements. The Commission must resolve these multiple interrelated proceedings in a manner that avoids undermining the Act's paramount goal of promoting facilities-based competition as are the technical and procedural standards that it adopts for interconnection and unbundling.

Sixth, and finally, the rules adopted in this proceeding must include standards by which the performance of the carriers they govern are measured and by which they may be enforced. Regardless of the specificity with which the Commission articulates the guidelines and rules it adopts in this proceeding, their effectiveness will be determined by their ability to be applied and, where necessary, enforced. Accordingly, it is incumbent upon the Commission that it adopt not merely standards and guidelines for interconnection, unbundling, resale, collocation, pricing and compensation, but also rules for their strict enforcement and penalties for noncompliance.

II. UNIFORM AND CONSISTENT NATIONAL STANDARDS ARE ESSENTIAL TO THE DEVELOPMENT OF TRUE FACILITIES-BASED LOCAL EXCHANGE COMPETITION

A central impediment to the development of facilities-based competition nationwide has been the extreme variability of state and local regulatory requirements that are applied to new entrants to the local exchange market and that govern interactions between CLECs and

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[6/]See, e.g., Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, Decision 95-07-050 (July 19, 1995).

incumbent LECs. Accordingly, Comcast strongly endorses the Commission's conclusion that under the 1996 Act it must implement "a pro-competitive, de-regulatory, national policy framework,"[7/] and that it must adopt in this proceeding "national rules" for interconnection and unbundling.[8/] For several years, the states have served as a laboratory of what can go right and what can go wrong. It is time to move out of the laboratory and make local exchange competition work everywhere in the nation. The Commission must now articulate an overarching set of standards to advance local competition in a consistent, uniform, even-handed and expeditious manner in every state.

Congress clearly intended to forge a new paradigm for the federal/state division of duties with respect to local exchange competition. For instance, Section 251 of the 1996 Act explicitly charges the Commission with responsibility to establish regulations implementing the requirements of the Act.[9/] Congress also specifically intended for the interconnection and unbundling requirements established by the Commission to preempt state regulations that are inconsistent with or otherwise would impede the implementation of those requirements.[10/] Additionally, Congress properly established very short mandatory timeframes for arbitration and review of interconnection agreements,[11/] which strongly

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[7/]Joint Explanatory Statement at 1.

[8/]NPRM at ¶ 26.

[9/]47 U.S.C. § 251(d)(1).

[10/]47 U.S.C. § 251(d)(3).

[11/]47 U.S.C. § 252(a), (b).

supports the need for clearly delineated, uniform national standards that will facilitate the expeditious resolution of conflicts.

Congress preserved a major role for the states in promoting the 1996 Act's pro-competitive goals. Congress recognized that the Commission could not possibly conduct an expeditious review of the large number of interconnection agreements that exist or will be negotiated pursuant to the 1996 Act, nor the inevitable complaints that will arise as new carriers win customers away from the incumbent LECs. Congress expressly granted authority to the states to oversee and apply the national rules within their respective jurisdictions.[12/] Local exchange policies already adopted in the states are entitled to some deference insofar as they are compatible with the terms and the pro-competitive intent of the 1996 Act.[13/]

In this way, Congress implicitly recognized that state action to date has lacked consistency in approach, timing, and effect. The resulting regulatory crazy quilt leaves all facilities-based competitors facing different and often conflicting rules and requirements for establishing networks and negotiating with incumbent LECs, and for providing service.

It is especially important for the Commission to recognize the impact of such inconsistency on cable operators such as Comcast that provide service on a regional basis to clusters of communities that reach across state boundaries. For instance, Comcast has a major cluster in the greater Philadelphia area that reaches multiple adjacent or nearby border

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[12/]47 U.S.C. § 252.

[13/]NPRM at ¶ 26.

communities located in the contiguous states of New Jersey, Pennsylvania, Maryland and Delaware. As Comcast pursues its business plans for competitive telephony services, it faces the recurring problem of navigating among different legal and regulatory environments that make it difficult to capitalize on the scale economies that its pre-existing cable facilities would otherwise make possible.[14/]

Each of the four states mentioned above occupies a very different place on the local exchange competition spectrum. At one end, regulators in Maryland have been very quick to implement pro-competitive rules for entry, interconnection, and unbundling, though the delayed resolution of rates for transport and termination has slowed competitive entry. Delaware regulators are at the other end of the spectrum, having not yet arrived at any rules for competitive entry. In the middle is New Jersey, which initiated a notice of inquiry proceeding in January to examine local competition issues.[15/] Pennsylvania, while reasonably progressive in terms of opening the market to CLEC applicants, has undercut incentives for new entry by proposing to impose on CLECs the same regulatory requirements that it imposes on the incumbent monopoly service provider, in contravention of the 1996 Act.[16/]

[14/]Unified service territories that span state boundaries similarly are located in Tennessee and Kentucky, where a single Comcast system straddles the state line. This is not uncommon in cable franchise areas.

[15/]See Local Exchange Competition for Telecommunications Services, Notice of Pre-proposal and Notice of Investigation in BPU Docket No. TX95120631 (January 16, 1996).

[16/]See Section IV.A., infra.

Comcast's experience confirms the Commission's tentative conclusion that entry by competitors in multiple states would be facilitated by imposing a single uniform set of core standards applicable to both the interstate and intrastate markets.[17/] The legal and regulatory variations among many of the adjacent states in which Comcast could offer telephony on a regional basis create an atmosphere in which it is often pointless, too expensive, or too burdensome for the company to exploit the economies otherwise available to it. Any cost efficiencies that Comcast might enjoy by virtue of having broadband facilities already in place in these regional systems are nullified by the disparate treatment that local exchange competitors receive from one state to another, and consumers are deprived of the benefits that they otherwise would enjoy. Explicit national rules will have a salutary effect on facilities-based competition by reducing the unpredictability and uncertainty that a state-by-state approach has engendered and enabling new entrants to deploy facilities and initiate service on a regional or multi-state basis.[18/]

III. STATE AND LOCAL BARRIERS TO ENTRY MUST BE ELIMINATED

Section 253 prohibits state and local jurisdictions from adopting or enforcing statutes or regulations that "prohibit or have the effect of prohibiting the ability of any entity to

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[17/]NPRM at ¶ 50. Clear national rules will provide greater regulatory stability than has ever existed at the state level, more so even than is provided by the "preferred outcomes" approach adopted in certain states.

[18/]The Commission questions whether it might be better to allow states to vary interconnection requirements based on state-specific technical, geographic, or demographic issues. NPRM at ¶ 51. As the Commission notes, permitting such an option would have the undesirable effect of reducing predictability and certainty, and further discourage new entrants from establishing networks in areas presenting geographic, technical, or demographic challenges. Id.

provide any interstate or intrastate telecommunications service."[19/] As the Commission has recognized, a formidable obstacle to the development and growth of facilities-based competition in the local exchange is the multiplicity of barriers to entry posed by state and local regulatory regimes.[20/] As noted above, the disparate state and local regulatory requirements that currently exist add tremendously to the difficulty of establishing competitive telephony networks. In order to advance the 1996 Act's goal of promoting facilities-based competition, the Commission must adopt rules in this proceeding that remove state and local barriers to entry.

A. State Certification Processes Can Operate to Thwart the Objectives of the Act

One of the most prominent barriers to entry initially encountered by prospective CLECs is a state-imposed certification requirement. Whether, or to what extent, certification requirements are imposed on new entrants varies a great deal from state to state. In numerous states, the certification process can be extremely drawn out and expensive, diverting essential resources and personnel from the business of building competitive facilities and protracting market entry delays.[21/] This works only to the advantage of the incumbent

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[19/]47 U.S.C. § 253(a)(emphasis added).

[20/]NPRM at ¶ 5., and fn. 10.

[21/]It also has been Comcast's experience that municipal permits and private contractual arrangements with other carriers and owners of rights of way cannot be obtained or even negotiated until the state has granted the new entrant a certificate of authority to operate. The longer and more protracted the certification process, the greater the delays in obtaining other permits or entering into negotiations for other arrangements critical to network buildout and the establishment of service.

LEC, while harming residents and businesses in the state, and doing violence to national competition policies.

Although the certification process can be a source of valuable information for a state commission, the process too frequently is susceptible to malicious procedural delay by the incumbent LEC. Rather than addressing the limited question of whether a new entrant has the technical, managerial and financial qualifications necessary to engage in the provision of intrastate services, the incumbent LEC too often exploits the process to delay or hinder the onset of true facilities-based competition or uses the process as leverage to obtain reductions in the level of scrutiny or regulation applied to its own services and facilities. In this fashion, the certification process is corrupted and ultimately operates not as a safety checkpoint, but as a roadblock. Thus, it is crucial that the Commission adopt rules in this proceeding to standardize the certification process and minimize the entry level review applied to new entrants.[22/]

Comcast believes that the barriers to entry posed by state certification processes could be reduced or eliminated if the Commission adopted guidelines for streamlining the process and reducing the amount of time and resources that new entrants are required to devote to

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[22/]Incumbent LEC applications to provide service as a CLEC in areas outside of or overlapping with their established service areas must be strictly scrutinized and subject to a full evidentiary hearing. For instance, Ameritech Communications Inc. ("ACI"), an affiliate of Ameritech, has filed applications to provide interexchange service and facilities-based and resold local exchange service in Illinois, and has filed similar applications in Ohio, Michigan, and Wisconsin. Given that ACI will be able to rely on the financial and operational support of Ameritech's monopoly telephone company assets, these applications should be subject to a thorough review by the respective states to ensure that ACI will not be able to engage in anticompetitive practices, and that separate subsidiary requirements are not being evaded.

such exercises. For example, as in Florida, the Commission could provide that where a new entrant already has obtained authority to provide service as a competitive access provider ("CAP"), authority to operate as a CLEC could be obtained by filing a postcard giving notice of the operator's intentions. The Commission also should adopt guidelines to limit the ability of incumbent LECs to intervene frivolously in the certification proceedings of new entrants. Competition in the local exchange is now a matter of federal law, and the incumbent LECs must henceforth be denied any opportunity to impede its progress. Finally, the Commission should adopt standards that require the states to act on new entrants' certification applications expeditiously and with a minimum of procedural delays or impediments. The timeframes for negotiating interconnection agreements, for example, are far too long and unnecessarily delay customer choice.

B. State and Local Rules, Regulations and Practices Can Pose Significant Barriers to Entry

In addition to certification requirements, a broad range of other official and unofficial state and local practices present substantial obstacles to CLEC market entry, compounding service and investment delays and misapplication of financial and human resources away from competition and toward regulation To ensure the development of facilities-based alternatives to the incumbent LECs, the Commission must explicitly preempt any practice by state and local authorities that has the effect of stalling or otherwise impeding competition.

One such barrier to entry is the imposition by some states of a requirement for new entrants to offer local exchange services outside the areas where they choose to serve, to build, or to utilize existing plant. Connecticut, for instance, requires that new entrants

commit to serve a less lucrative area in order to be eligible for certification in one of eight areas designated as "more economically attractive."[23/] Such requirements can make market entry highly uneconomic and do little or nothing to promote true facilities-based competition outside of the applicant's intended service area, and may cause potential new entrants to delay or even cancel their planned operations in a state. Such requirements also diminish the ability of a facilities-based CLEC to distinguish its service offerings in the marketplace, and serve only to impose the incumbent LEC's rate plan structure on new entrants. Imposing an extended service area requirement on a new entrant also prevents it from using calling areas to distinguish itself from the incumbent LECs or other CLECs, thereby interfering with competition. It also removes one of the unique assets that a new facilities-based entrant can bring into the marketplace: its established brand and reputation in its existing service area, as it goes up against an established incumbent. The Commission should preempt any attempts by states to limit, define, or otherwise interfere with a new entrant's geographic service area.

Another barrier faced by new entrants is unequal treatment by municipalities of incumbent LECs and CLECs when they try to seek permits to construct facilities. For instance, in order to build out a network in some states, it is necessary to obtain a permit from each city government. Typically, this involves the filing of an application with the city and negotiation of rights-of-way agreements. On average, this process can take a CLEC at

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[23/]See DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity, Decision in Docket 94-07-03 (March 15, 1995) at 26-27.

least three months and generally longer to complete. During that period, the CLEC is prohibited from engaging in any construction covered by the requested permit, often resulting in delays that drive up the cost of network construction and critically affect the ability of the CLEC to market and provide its services in a timely fashion. On the other hand, the incumbent LEC, which is capable of trading on established relationships, may be able to accomplish the same task in less than a day, and may even be able to obtain the required authority verbally.

Another example of the municipal use of permit authority to create barriers to entry may be found in Michigan. Under the Michigan Telecommunications Act, municipalities are allowed to issue permits for the use of their rights of way.[24/] The Michigan Act also grants municipalities the authority to impose upon carriers a non-discriminatory fee equal to the fixed and variable cost to issue the permit and maintain the city's rights-of-ways.[25/] In practice, certain Michigan cities, notably the City of Troy, have failed to impose their fee requirement on Ameritech, which claims to be exempt from any local permit requirements, but have imposed the fee requirement on new entrants. In cities such as Troy, which imposes a fee on new entrants of up to $.40 per linear foot or 5% of gross revenue, the

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[24/] 1991 Mich. Pub. Acts 179, as amended by 1995 Mich. Pub. Acts 216, Art. 2A, § 251(3).

[25/] 1991 Mich. Pub. Acts 179, as amended by 1995 Mich Pub. Acts 216.

unequal application of the fee requirement places new entrants at a significant disadvantage.[26/]

The Commission must unequivocally affirm that states and municipalities must provide necessary permits and rights of way authority to CLECs on the same terms and conditions as are accorded to incumbent LECs. This result is compelled by the 1996 Act.[27/] Delayed consideration of permit requests, holding qualified CLECs to different and more demanding standards than are applied to LECs, and other arbitrary treatment at the hands of state or municipal authorities discourages new entrants' network construction plans, harms their sales and marketing activities and customer relationships, and otherwise wastes precious time and financial resources. Unless and until CLECs are able to implement their business plans as expeditiously as incumbent LECs, facilities-based local exchange competition will lag, and national competition policy will be subverted.

IV. INCUMBENT LECS MUST BE HELD TO CERTAIN BASIC STANDARDS FOR INTERCONNECTION AND UNBUNDLING

A. Only Incumbent LECs are Subject to Unbundling Requirements Under the 1996 Act

The 1996 Act establishes two distinct classes of local exchange carriers and subjects each to a different level of obligations.[28/] This two-tiered structure is in accordance with

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[26/]In addition, the City of Troy is attempting to impose onerous conditions such as rate regulation, interconnection requirements and provision of free facilities to the municipality upon new entrants, but not upon Ameritech.

[27/]47 U.S.C. § 253(c)(management of rights of way must be "competitively neutral and nondiscriminatory")

[28/]47 U.S.C. § 251(b), (c).

Congress' finding that only carriers with market power in the provision of local exchange services require extensive regulation.[29/] This is consistent with well-established practice applying such regulation to the incumbent LEC because: 1) it controls bottleneck facilities to which competitors must have access on reasonable terms and conditions in order to compete; 2) it has a ubiquitous network in place that was subsidized by its state-granted monopoly control over the local exchange; 3) it provides services for which there are no other providers in the local exchange market; 4) it has the ability to cross-subsidize competitive services with revenues from noncompetitive services; and 5) by virtue of its dominance and market power, it has the ability to engage in predatory pricing.

The 1996 Act recognizes that new entrants lack these characteristics; therefore, it specifically subjects them to more limited interconnection and resale requirements.[30/] In particular, the 1996 Act does not require CLECs to unbundle their network elements or to offer interconnection at "any technically feasible point."[31/] As specified in Section 251, CLECs are required only "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[32/] In determining how they will interconnect with requesting carriers, a CLEC must ensure that its customers have a means of exchanging traffic with customers of other carriers; this more flexible requirement is in

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[29/]See, e.g., S. Rep. No. 23, 104th Cong., 1st Sess. 5 (1995).

[30/]47 U.S.C. § 251(a).

[31/]Id.

[32/]Id.

keeping with the 1996 Act's overall goal of applying less stringent obligations to carriers lacking market power, and enables CLECs to interconnect with other carriers in an efficient and cost effective manner.

The incumbent LEC/CLEC distinction is so fundamental that any state law applying incumbent-like regulation to a CLEC must be deemed inconsistent with Section 251(d)(3).[33/] Comcast has encountered this problem in a number of states, such as Connecticut and Michigan, which, under the theory that they regulate services rather than providers, subject incumbent LECs and CLECs to identical regulations.[34/] Connecticut also has raised the possibility that it would require CLECs to unbundle their networks, and be subject to cost allocation requirements or any other incumbent LEC regulations.[35/] Pennsylvania also is considering imposing similar requirements on CLECs.

The Commission must remove any ambiguity about the incumbent LEC/CLEC distinction in the 1996 Act by reaffirming that states are without authority to saddle CLECs with an inappropriate level of regulation that would discourage them from investing in facilities construction.

[33/]47 U.S.C. § 251(d)(3).

[34/]See 1991 Mich. Pub. Acts 179, as amended by 1995 Mich. Pub. Acts 216, Art. 1, § 101(2)(c)(stating that the purpose of the Act is to restructure regulation to focus on price and quality of service and not on the provider.)

[35/]See Investigation into Participative Architecture Issues, Statement of the Scope of the Proceeding in Connecticut Department of Public Utility Control Docket No. 94-10-04 (adopted March 5, 1996) at 2.

B. All Past and Present Incumbent LEC Interconnection Points Should be Considered "Technically Feasible"

Section 251(c)(2) requires that incumbent LECs provide interconnection to all telecommunications carriers at "any technically feasible point" within their networks.[36/] Comcast strongly endorses the Commission's tentative conclusion to establish as a minimum federal standard that interconnection at any point on the incumbent LEC network where any other carrier has been or is currently provided interconnection will be considered "technically feasible."[37/] As noted in the NPRM, for any given incumbent LEC this would mean that all past and current interconnection points on their network, such as at transport facilities, tandem facilities, signal transfer points, and trunk- and loop-side of the local switch, would be deemed technically feasible points at which the LEC must offer interconnection to any requesting carrier.[38/] This also would hold true for every other incumbent LEC that uses technology similar to that used by an incumbent LEC presently providing interconnection at such points.[39/] In addition, the minimum federal standard should incorporate mutually agreeable meet point arrangements under which the participating carriers would share equally the costs for the meet point facility, but would be individually responsible for their own facility and operational costs to reach the meet point.

[36/]47 U.S.C. § 251(c)(2).

[37/]NPRM at ¶ 57.

[38/]Id.

[39/]Id.

Comcast concurs with the Commission that a minimum national standard for technically feasible interconnection points will expedite the negotiation of interconnection agreements and may well eliminate potential areas of dispute.[40/] Nevertheless, in the event that disputes do arise over the standard for interconnection, a minimum standard in the Commission's rules will help the states to perform their function as arbitrators of interconnection disputes successfully, and should significantly reduce delays in network construction as occasioned by disputes in the absence of clear standards.

C. Unbundling Rules Should Be Flexible in Order to Accommodate the Needs of Diverse Carriers with Evolving Networks

Under the 1996 Act, incumbent LECs have a duty to provide unbundled network elements to requesting carriers in a way that permits such carriers access to only those network elements that the carrier needs to provide telecommunications services.[41/] As noted in the NPRM, the purpose and intent of these statutory provisions is to "foster competition by ensuring that new entrants wishing to compete with incumbent LECs can purchase those network elements that they do not possess, without paying for elements that they do not require."[42/]

Comcast encourages the Commission to be forward-looking in defining which elements should be unbundled. Over time, the networks of CLECs will mature and new CLECs will continue to emerge and bring their services and facilities to market. As this

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[40/]NPRM at ¶ 50.

[41/]47 U.S.C. § 251(c)(3).

[42/]NPRM at ¶ 75.

occurs, the Commission's rules should be flexible enough to accommodate changes that will occur over time in technology and the manner in which CLECs provision their services. If the Commission adopts a static set of rules that limits the network elements that incumbent LECs must provide, the rules ultimately will prove too inelastic and may choke off innovation.

Nevertheless, it is incumbent upon the Commission to establish some minimum set of unbundled network elements in order to limit the number of disputes that may result from requests for unbundled network elements. Although the Commission must be clear that any such list cannot be comprehensive, any minimum set of network elements to which the incumbent LECs should provide unbundled access should include:

- access to databases and signalling necessary for call routing and completion;
- unbundled local loop transmission. trunk side local transport, and local switching; and
- access to 911 and E911 services, directory assistance services, and operator services.

D. The Commission Must Not Adopt Resale Policies that Would Thwart or Impede Facilities-Based Competition

Under the 1996 Act, incumbent LECs are required to offer their telecommunications services to other carriers at wholesale rates.[43/] In defining such rates, the Commission must

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[43/]Wholesale rates are defined as "retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. § 252(d)(3).

guard against policies that have the effect of discouraging investment in alternative distribution networks by new entrants. On the one hand, if the Commission's resale pricing standard results in resale rates being set too high, then the role of resale as a precursor to facilities-based competition will be diminished. On the other hand, if the resulting resale rates are too low, competitors will find it uneconomic to invest in new facilities. The Commission must construe the "avoided costs" standard narrowly so as not to result in artificially low resale rates which could have the effect of discouraging facilities-based competition.[44/] Comcast endorses the National Cable Television Association's suggestion of a benchmark resale discount not to exceed 10 percent off of an incumbent LEC's standard retail rate for end user services, which discount should not increase even if retail rates are adjusted or rebalanced.

[44/]Wholesale resale pricing requires national standards in order to provide the consistency and certainty to the regulatory landscape. For instance, the State of Tennessee has ordered that wholesale resale rates be set at a 25% discount. California, on the other hand, provides for a 10% discount. Anything greater than a 10% discount, such as the steep wholesale discount ordered by Tennessee, will make it extremely difficult for facilities-based CLECs to compete effectively against local exchange resellers who are able to obtain service at such discounted rates.

National standards also are required to prevent states from adopting policies that favor resale over facilities-based competition. For instance, in Indiana, the commission is considering adoption of resale policies and rules in advance of establishing any ground rules for facilities-based competition. In order to avoid putting facilities-based competitors at a disadvantage and discourage investment in alternative networks, states must not be permitted to put resale on the agenda ahead of facilities-based competition issues.

E. Pricing Standards Must Promote Facilities-Based Competition

Sections 251(d)(1) and 251(d)(2) establish the pricing standards to be applied to interconnection, transport and termination, and unbundled network elements.[45/] Although interrelated, the pricing standards under these two sections for unbundling and interconnection, and transport and termination, respectively, are distinctly different. The rules established by the Commission pursuant to these two sections must acknowledge and reflect these differences.

Under the Act, the pricing methodology for transport and termination limits each carrier to a recovery only of a "reasonable approximation of the additional costs" associated with terminating calls.[46/] Thus, this methodology contemplates that the charge for transport and termination is to be based on only the incremental costs of terminating calls.[47/] To effectuate the 1996 Act's requirements, the Commission should adopt pricing standards for transport and termination as outlined in the comments of the National Cable Television Association ("NCTA"). As explained by NCTA, carriers would be limited to a charge for transport and termination that covers only the total service long run incremental cost to terminate an additional call originating on another carrier's network, without any loading of legacy, embedded, overheads or joint and common costs.

[45/]47 U.S.C. § 252(d)(1) and § 252d)(2).

[46/]47 U.S.C. § 252(d)(2)(A)(i).

[47/]47 U.S.C. § 252(d)(2)(A)(ii).